UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

BROTHERHOOD OF LOCOMOTIVE ENGINEERS and UNITED TRANSPORTATION UNION,	)	
PLAINTIFFS	)	
v.	)	**Civil No. 98-284-P-H**
SPRINGFIELD TERMINAL RAILWAY COMPANY and AROOSTOOK AND BANGOR RESOURCES, INC.,	)	
DEFENDANTS	)	

JUDGMENT AND ORDER

This lawsuit arises out of the defendant Aroostook & Bangor Resources' ("ABR") use of nonunion employees to switch railroad cars on the premises of shippers who used to be served by the unionized employees of Springfield Terminal Railway Company ("Springfield Terminal"). The unions claim that the practice amounts to a unilateral change of the working conditions established under the collective bargaining agreements between Springfield Terminal and the unions. The unions seek an injunction to maintain the status quo pending mediation of this dispute under section 6 of the Railway Labor Act. See 45 U.S.C. § 156.[1] The matter is presented for judgment on a

[1] Although the unions initiated this lawsuit by complaining of many different actions on the part of both Springfield Terminal and ABR, they narrowed the scope of their dispute significantly in subsequent pleadings and at oral argument. At oral argument, the unions conceded that ABR is free to do its own switching at its facility at Mattawamkeag, and focused their complaint on a single issue: their request to enjoin ABR from doing switching for Springfield Terminal consignees.

stipulated record.[2] Because I conclude that the parties are involved in a so-called "major" dispute under the Railway Labor Act, the request for a status quo injunction is **GRANTED**. Pursuant to Fed. R. Civ. P. 52(a), I enter my findings of fact and conclusions of law.

FINDINGS OF FACT

Springfield Terminal is a wholly owned subsidiary of Guilford Transportation Industries, Inc. ("Guilford"). Springfield Terminal engages in general railroad operations: it owns, leases and operates tracks, maintains rail yards and provides freight service to rail customers. Guilford, so far as appears from the record, is a holding company.

ABR was formed in August of 1994 in order to purchase an existing mill facility at Mattawamkeag, Maine. ABR was capitalized by its three shareholders, Timothy Mellon, David Andrew Fink and his son, David Armstrong Fink. ABR has thirty-five employees and engages primarily in processing and manufacturing raw and finished wood products.

The three corporations, Guilford, Springfield Terminal and ABR, are all closely related. From January 1998 to August 1998, the three corporations had the same four directors: specifically, the three owners of ABR, plus Richard Kelso.[3] These four individuals also own all the shares of

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[2] Although the plaintiffs styled their final pleading a motion for summary judgment, the record is clear that the parties are not cross-moving for summary judgment but are seeking judgment on a stipulated record. The procedural difference is significant. In a case submitted for judgment on a stipulated record, I resolve disputed issues of material fact; on cross-motions for summary judgment, if I find genuinely disputed issues of material fact, I can neither resolve the disputes nor enter a final judgment. See Boston Five Cents Sav. Bank v. Secretary of the Dep't of Housing & Urban Dev., 768 F.2d 5, 11-12 (1st Cir. 1985).

Although the parties submitted a stipulated record, the plaintiffs moved at oral argument to open the record. Specifically, they wished to add two items (a calendar and a newsletter) recently published by the "Guilford Rail System." Exhs. 1 and 2. I reserved ruling at the hearing. I now accept these items into evidence, but, as I find them duplicative of evidence already in the record, I give these items no weight in reaching my decision.

[3] Before January 1998, D. Armstrong Fink was not a member of the board of Springfield Terminal.
(Continued next page)

Guilford. The only difference in ownership between ABR and Guilford, therefore, is that Mr. Kelso owns some portion—the record does not indicate how big a portion—of Guilford but owns no portion of ABR.

No commonality of corporate officers appears in the record. The only overlap of management (beyond the identity of directors) is that D. Armstrong Fink is President of ABR and is an Executive Vice President at Springfield Terminal. There is no evidence in the record to show who the officers of Guilford are.

Both unions are national in scope and represent different crafts in their dealings with Springfield Terminal. The Brotherhood of Locomotive Engineers represents the crafts of locomotive engineers and hostlers, and the United Transportation Union represents brakemen, conductors, laborers and police. Both unions have collective bargaining agreements with Springfield Terminal governing wages and crew makeup for the movement of railroad cars on Springfield Terminal track. There is no such agreement with ABR.

Between April 1996 and August 1996, Springfield Terminal attempted to negotiate a "mill switcher" agreement with the unions. The agreement would create two new positions: "mill switcher," responsible for switching cars on the premises of Springfield Terminal's customers; and "mill switcher engineer," a locomotive engineer engaged in switching work for a customer. Mill

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He joined the board in January 1998, the same time that he became employed by Springfield Terminal as Executive Vice President. His duties at Springfield Terminal include media relations and government affairs; he is responsible for running the daily staff meeting when the President is not available.

After August 1998, the Springfield Terminal board added a fifth director. Thomas Steiniger became the fifth director, when he joined Springfield Terminal as its President, replacing D. Andrew Fink. Mr. Fink retained his position as a director.

I have focused on the makeup of the companies for the period January 1998—August 1998 because that is when the operational changes at ABR, which are at the heart of this dispute, began. The differences in corporate structures prior to January 1998 and after August 1998 are slight in any event.

switcher crews would be smaller than the crews required under the existing collective bargaining agreements, and wages for engineers when performing mill switching would be lower than the engineer's wages set in the collective bargaining agreements. Proposed agreements negotiated by the unions' leadership were rejected by the membership of both unions.

Approximately two years later, in April 1998, Springfield Terminal employees went to the ABR yard at Mattawamkeag and trained ABR employees to do switching at ABR's mill. The training lasted about six days. ABR leased a trackmobile from Maine Central (another railroad owned by Guilford), with a view to doing its own switching at Mattawamkeag. Springfield Terminal leased four tracks to ABR at Mattawamkeag (in addition to the two tracks that ABR uses inside its own fence) to facilitate ABR's self-switching.

Sydney Culliford, Springfield Terminal's Vice President of Transportation, suggested to ABR that, if ABR did not use the trackmobile to full capacity doing its own switching, ABR might do switching for third parties. Mr. Culliford attended a meeting between ABR and Lincoln Pulp & Paper ("Lincoln") to discuss such a possibility.

By May 1998, ABR was doing its own switching and performing industrial switching for Lincoln and for Champion International, Inc. Both Lincoln and Champion are freight customers of Springfield Terminal. Springfield Terminal performed their industrial switching with union employees before ABR took over that work.

In August 1998, the unions filed this federal lawsuit seeking an injunction pending mediation. In September 1998, they made a joint counter-proposal for a mill switcher agreement with Springfield Terminal.

CONCLUSIONS OF LAW

The parties agree that this court has jurisdiction to issue an injunction if their dispute is a "major" dispute, but not if it is "minor."[4]

"[U]nilateral attempts to change the contract" are major disputes, but "mere[] disagreements over the meaning or coverage of the contract" are minor disputes. Brotherhood of Locomotive Eng'rs v. Boston & Me. Corp., 788 F.2d 794, 797 (1st Cir. 1986). "Where an employer asserts a contractual right to take the contested action, the ensuing dispute is minor if the action is arguably justified by the terms of the parties' collective-bargaining agreement. Where, in contrast, the employer's claims are frivolous or obviously insubstantial, the dispute is major." Consolidated R. Corp. v. Railway Labor Executives' Ass'n, 491 U.S. 299, 307 (1989) ("Conrail").

The contract claim can be based on either the express terms of the collective bargaining agreement or on implied terms, which comprise the actual objective working conditions in existence at any time. See Brotherhood of Locomotive Eng'rs, 788 F.2d at 799. Past practices sufficiently similar to the disputed practice can give rise to implied contract terms if the unions knowingly acquiesced in those practices; in characterizing the dispute as major or minor, the central question is

[4] This is not one of the exceptional cases in which an injunction can issue even though the dispute be minor. See, e.g., International Ass'n of Machinists v. Eastern Air Lines, 826 F.2d 1141, 1146 (1st Cir. 1987) (stating that the court should not issue an injunction in a minor dispute unless only that remedy can guard a plaintiff's Railway Labor Act right jeopardized by the defendant's statutory violation); Railway Labor Executives' Ass'n v. Boston & Me. Corp., 808 F.2d 150, 157 (1st Cir. 1986) (holding that district court had jurisdiction over unions' claims that employer discharged employees in retaliation for employees' engaging in protected strike even though employer arguably had the contractual right to discharge any employee). There is a third class of dispute, the "representational" dispute, which is neither major nor minor; in a representational dispute, a federal court cannot issue a status quo injunction. See United Transp. Union v. Gateway W. Ry., 78 F.3d 1208, 1213 (7th Cir. 1996) (describing a representational dispute). The parties have not briefed the issue of a representational dispute at all, and I see no basis in the record to conclude that this dispute is representational.

whether the carrier's reliance on the alleged past practice is "totally implausible." Maine Cent. R.R. v. United Transp. Union, 787 F.2d 780, 783 (1st Cir. 1986).

Here, the companies disavow reliance on any express contract term, see Post-Evidentiary Br. of Defs. (Docket Item 26) at 8; accordingly, this dispute is minor only if past practices arguably justify the action that the companies have taken. The companies have pointed only to past practices where Springfield Terminal has helped its customers take over their own switching work. The unions, however, no longer quarrel with ABR doing its own switching. Instead, the unions complain because Springfield Terminal, they say, is essentially assisting ABR to act as a railroad in doing nonunion switching work for customers, specifically Springfield Terminal's customers, who would otherwise be using Springfield Terminal's union crews. There is not even arguably any such past practice. I agree with the unions that any purported reliance on past practices to justify this new arrangement is, therefore, obviously insubstantial; this is not a minor dispute.

In the decided cases, the dispute that most resembles this one was held to be a major dispute. See Burlington N. R.R. v. United Transp. Union, 862 F.2d 1266 (7th Cir. 1988). In Burlington, the railroad negotiated with local committees of the United Transportation Union to reduce the crew makeup for a particular type of train, known as the "Expediter Service." Although most of the local committees came to agreement with the railroad, Burlington Northern could not obtain agreement from the local committees covering approximately 1,860 miles of track known as the railroad's "Northern line." The railroad, therefore, granted trackage rights over the Northern line to its wholly-owned subsidiary, Winona Bridge. The subsidiary, which had owned only an out-of-service bridge and a mile of track and which had only five employees, planned to hire all new crews to operate the Expediter Service over the Northern line. The railroad obtained ICC approval for the trackage rights agreement. See id. at 1269. When the union protested the new arrangement, the district court found

a major dispute and granted a status quo injunction, enjoining the performance of even the trackage rights agreement. The Seventh Circuit affirmed the finding of a major dispute, remanding only for the district court to tailor its injunction more narrowly so as to permit the trackage rights agreement—but not unilateral changes in the terms of the collective bargaining agreement—to remain in force. See id. at 1282. Burlington Northern claimed that the dispute was minor because the unions had acquiesced in up to forty prior trackage rights agreements, content to accept any ICC-imposed labor-protective provisions. See id. at 1273. The Seventh Circuit rejected that argument, looking behind the purported trackage rights agreement and construing the transaction as essentially a unilateral attempt to alter the terms of the collective bargaining agreement governing crew makeup. See id. at 1274.

The defendants attempt to distinguish the Springfield Terminal/ABR arrangement from Burlington on the ground that ABR is not a wholly owned subsidiary of Springfield Terminal, nor a wholly owned subsidiary of Guilford. The Burlington decision, however, does not rest on the fact that Winona Bridge was a wholly owned subsidiary. The relationship between Burlington Northern and Winona Bridge was relevant in Burlington as it bore on "whether Burlington ha[d] put forth a credible argument that the dispute in issue may be resolved by application of the collective bargaining agreement . . . . Burlington's argument that it has an implied contractual right to alter unilaterally crew consists is simply too insubstantial to sustain." Id at 1273. Likewise here, the argument that implied contractual rights permit the new arrangement is simply too insubstantial.

Moreover, Burlington stands for the proposition that a court can look beyond the surface of purportedly similar transactions to see whether the disputed practice before it is in reality an attempt to evade the collective bargaining agreement; where the disputed transaction allows a corporate relative not bound by the collective bargaining agreement to perform work covered by the collective

bargaining agreement, and that transaction follows closely on the railroad's failed attempt to negotiate new terms for the work in question, such facts— though not conclusive—bear directly on the plausibility of the railroad's claim that the collective bargaining agreement arguably permits the transaction in question. See id. at 1273.

In this case, after failing to obtain a mill switcher agreement with the unions, Springfield Terminal trained ABR personnel to do industrial switching; Springfield Terminal's Vice President of Transportation suggested that ABR pursue switching contracts with Springfield Terminal's customers and attended at least one meeting between ABR and a Springfield Terminal customer for that purpose; and another Guilford-owned railroad leased ABR the trackmobile that it uses to do switching. Given the close family relationship among these various corporations and Springfield Terminal's failed attempt to negotiate more favorable terms for the work that ABR is now doing on a nonunion basis, Springfield Terminal's claim that it is not attempting to change unilaterally the terms of the collective bargaining agreements is totally implausible.

Accordingly, the dispute between these parties is major, not minor. The parties are to maintain the status quo pending Section 6 mediation of their dispute. The defendant Aroostook & Bangor Resources, Inc. can continue to perform its own industrial switching at its facility in Mattawamkeag, and the Springfield Terminal-ABR track lease can remain in effect. The defendant Aroostook & Bangor Resources, Inc. will be enjoined, however, from performing industrial switching for Lincoln Pulp & Paper, for Champion International, Inc. or for any other entity to whom Springfield Terminal currently provides switching services.

The unions shall prepare the text of an injunction and present it for approval of form to the defendants, then file it with the Court by February 19, 1999.

SO ORDERED.

DATED THIS 5TH DAY OF FEBRUARY, 1999.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE